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THE CONSTITUTIONAL REFERENDUM IN CALIFORNIA.

THE fact that ninety proposals for constitutional amendments were introduced during the last session of the legislature in California, created in some quarters an apprehension that the entire organic law of the state might be going to pieces; and, under the impression that things must be extremely unsatisfactory to call for so many suggestions of change, the legislature hastily passed a resolution submitting to the people the question of calling a convention to frame an entirely new constitution. But there was really no cause for alarm. The truth is that California has been making an extremely interesting experiment in government, and one that promises to work very well. It is nothing less than dispensing with a constitution, in the old sense, and substituting two classes of laws — one of more importance and authority, adopted by the people; and the other of less, enacted by the legislature.[1]

The first constitution of California, framed in 1849, was amended only three times in the course of thirty years. The process of amendment was difficult, for the concurrence of two successive legislatures was required before a proposed change could be submitted to the people. The constitution was drawn

[1] The course of California illustrates a general tendency in our state polity, which is discussed in its broad aspects by Professor Burgess in an article entitled "The American Commonwealth," in POLITICAL SCIENCE QUARTERLY, vol. i, esp. pp. 26–35.

in general terms, and an amendment was considered a serious matter. The new constitution, adopted in 1879, was framed on entirely different principles. As has often been pointed out, it was not really a constitution, but a code of laws. It regulated a great variety of the affairs of life in minute detail.

A few examples of the contrasted methods of the two instruments may be of interest. The old constitution said :

> No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

In the new constitution this provision developed as follows :

> The legislature shall have no power to authorize lotteries or gift-enterprises for any purpose, and shall pass laws to prohibit the sale in this state of lottery or gift-enterprise tickets, or tickets in any scheme in the nature of a lottery. The legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

The old constitution said of appropriations :

> No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every session of the legislature.

To this was added in 1871 the provision :

> The legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years.

On this subject the new constitution laid down these rules :

> No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the controller; and no money shall ever be appropriated or drawn from the state treasury for the use or benefit of any corporation, association, asylum, hospital or any other institution not under the exclusive management and control of the state as a state institution,

nor shall any grant or donation of property ever be made thereto by the state; *provided*, that notwithstanding anything contained in this or any other section of this constitution, the legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances — such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the state shall have, at any time, the right to inquire into the management of such institutions; *provided further*, that whenever any county, or city and county, or city or town shall provide for the support of minor orphans, or half orphans, or abandoned children or aged persons in indigent circumstances, such county, city and county, city or town shall be entitled to receive the same *pro rata* appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the legislature. . . .

The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the state officers, the expenses of the government, and of the institutions under the exclusive control and management of the state. . . .

Neither the legislature, nor any county, city and county, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed or sectarian purpose, or help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and country, town or other municipal corporation for any religious creed, church or sectarian purpose whatever; *provided*, that nothing in this section shall prevent the legislature granting aid pursuant to section twenty-two of this article. . . .

The legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the state, or any county or municipality of the state, under any agreement or contract made

without express authority of law; and all such unauthorized agreements or contracts shall be null and void. . . .

No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

The old constitution disposed of the subject of city and town governments in 133 words; the new one devoted 1925 words to the same topic. The constitution of 1849 regulated revenue and taxation in one short paragraph; that of 1879 handled the subject in thirteen sections, two of which occupied between them nearly eight times the space filled by the entire provision in the earlier instrument. Not a single point covered in the old constitution was neglected in the new, but the new had four entire articles and 125 paragraphs to which there was nothing in the old to correspond.

With so wide a range of possible contingencies thus provided for, the new state government was set to work. But at once the elaborate rules prescribed for its guidance began to chafe. The legislature found itself barred in on every side. Much bad legislation was prevented, but so was much that was necessary. Then the courts began the process of exposition. Between the statutes that were invalidated, because they conflicted with the elaborate provisions of the new constitution, and the constitutional provisions that were themselves annulled, on the ground that they did not harmonize with the Constitution of the United States, it began to look as if California had lost the power to do anything at all. Its paper swaddling bands had stopped all growth and movement. Students of political science pointed to the fundamental law of California as an impressive example of the way in which a constitution ought not to be made. The attempt to provide for everything in advance, it was shown, had led to general confusion and paralysis.

Meanwhile something had to be done, and there was only one way to do it. The people found themselves started, without any theorizing, on the path of facile and copious constitutional amendment. An end that would be reached in another state by an act of the legislature would be attained in Califor-

nia by tinkering the constitution. In the first legislature that met under the new instrument, three amendments were introduced; but as it was too early to feel the effects of the change in the system of government, none of them passed either house. In the next legislature, whose ordinary session lasted from January 3 to March 4, 1881, nine constitutional amendments were introduced in the senate and eleven in the assembly; but none passed, although eight secured favorable committee reports in the assembly. In the senate were also introduced two resolutions for ascertaining the will of the people upon certain propositions — a device that has found much favor in California ever since the decisive popular vote against Chinese immigration in 1879. One of these resolutions, relating to the method of electing president and vice-president, passed the senate but got no further. There was an extra session immediately afterward, but nothing was then done to alter the constitution.

At the regular session of the next legislature, lasting from January 8 to March 13, 1883, ten proposed constitutional amendments were introduced in the senate, of which three passed that body, while two were submitted to the people and adopted. By that time the limitations of the new constitution were beginning to be felt. Of the two successful senate amendments, one struck out the provision of Article XI, section 19, requiring the prepayment of special assessments for street work. The other provided for the publication of school text-books by the state. The former was adopted by 149,285 affirmative to 7363 negative votes, and the latter by 143,017 votes in favor to 11,930 against. At the same session twenty-eight proposals for amendments were introduced in the assembly. Of these only one (relating to the state board of equalization) passed the house in which it had originated, and that one went no further at the time.

The next year, however, the same legislature was called in extra session to deal with railroad rates and taxes; and on that occasion a senate amendment regarding the board of equalization went through both houses. Although the legislature was not then allowed to touch any subject not mentioned in the

call, and was therefore confined to the consideration of measures affecting railroads and taxation, nineteen constitutional amendments relating to these topics were proposed in the senate and twenty-six in the assembly. Of the senate amendments, only one passed that body. This one also passed the assembly, was submitted to the people, and was adopted by 128,371 affirmative to 27,934 negative votes. It limited the membership of the state board of equalization to four, and forbade the assessment of money and evidences of debt at more than their face value. Of the assembly amendments, three passed the assembly, but all came to grief in the senate.

In the next legislative session, beginning January 5 and ending March 11, 1885, ten constitutional amendments were introduced in the senate, which declined to pass any of them. Fifteen were introduced in the assembly, of which four passed that body. Two of these related to revenue and taxation, one to the legislative department, and one to the sale, rental and distribution of water. One, providing that railroads should pay income taxes of two and one-half per cent in lieu of all other taxes on plant, franchises, rolling stock and securities, was submitted to the people and defeated by 123,173 negative to 9992 affirmative votes.

About that time the state supreme court profoundly agitated the agricultural community by deciding that the English law of riparian rights prevailed in California, and hence that the diversion of water from streams for irrigation without the consent of the lower riparian owners was illegal. So much feeling was created by this decision that an extra session of the legislature was called in 1886 to protect the irrigation interests. Nothing was accomplished, however. Ten constitutional amendments, and a resolution submitting to the people the proposition to create and maintain state water works for irrigation and other beneficial uses, were introduced in the senate and sixteen amendments in the assembly, but none of them succeeded in passing either house.

The next legislature met on January 3, 1887, and the session lasted until March 12. In the senate seven constitutional

amendments were introduced, of which five passed the house in which they originated. Two of these related to the judiciary, one to the legislature, one to the boards of education and the examination of teachers in cities, and one to revenue and taxation. The two judiciary amendments passed both houses; but, when submitted to the people at a special election, held on April 12, 1887, were defeated. Of these proposed amendments the first reorganized the supreme court, providing for the departments, the election of the chief justice by the court, twelve-year terms for justices and retiring salaries of $250 per month for unexpired terms in cases of disability. The affirmative vote on that proposition was 29,349 and the negative 41,367. The other raised the salaries of justices from $6000 to $7500, gave the supreme court commissioners a constitutional instead of a statutory standing, with salaries raised from $5000 to $6000, and altered the salaries of superior judges in the counties. This was rejected by a vote of 27,659 to 43,005. At the same session twenty-one amendments were introduced in the assembly, of which five passed that body. Two of these related to the judiciary, one to the powers of the legislature, one to irrigation and one to city charters. The last was submitted to the people, along with the two unsuccessful senate amendments, and was adopted by a vote of 37,791 to 34,156. It extended to cities of over 10,000 inhabitants the power — previously confined to cities of over 100,000 — of framing their own charters.

In the succeeding legislative session, extending from January 7 to March 16, 1889, fourteen amendments were introduced in the senate, which passed five of them, relating respectively to city charters, school text-books, railroad taxation, appropriation bills and judicial salaries. One succeeded in reaching a popular vote, and was adopted by 96,342 ayes to 3275 noes. It extended to cities of 3500 inhabitants the privilege of framing their own charters — a right previously granted first to those of over 100,000 and then to those of over 10,000. In the assembly fifteen amendments were introduced, four of which passed that body, but none went any further.

By the time the next legislature met, on January 5, 1891, the people had become fairly accustomed to the conception of their constitution as in a state of flux. At this session twenty-three amendments were proposed in the senate, which agreed to eleven of them. Four of these related to taxation, one to freedom of speech and of the press, one to the pardoning power, one to the sessions of the legislature, one to the lieutenant-governor, one to city charters, one to trial by jury and one to the creation of new counties. Three passed both houses and were submitted to the people at the general election in the following year. The first, extending the length of the legislative session for which pay could be drawn from sixty to one hundred days, was defeated by a vote of 36,442 to 153,831. The second, increasing the duties and compensation of the lieutenant-governor and abolishing the limit of $1600 for clerical salaries, was rejected with 43,456 affirmative and 128,743 negative votes. The third, consolidating the provisions about city charters, and providing that charters prepared by boards of freeholders should supersede all laws inconsistent therewith (instead of merely special laws, as had been the rule before) was carried by 114,677 to 42,076.

In the assembly at this session twenty amendments were introduced and three passed — one relating to the powers of the legislature, one to appropriations and deficiencies and one to local indebtedness. Two of these passed both houses and were submitted to the people. The first, embodying in the constitution the statutory method of incurring deficiencies by the unanimous consent of the governor, the secretary of state and the attorney general, was rejected by 69,286 to 87,708. The second, extending the time allowed for local bonds to run from twenty to forty years, was carried by 108,942 to 59,548.

In addition to the five constitutional amendments, this legislature also submitted to the people four propositions. The first called for an expression of opinion on the question whether United States senators should be elected by popular vote. The change was favored by 187,958 voters, while it was opposed by 13,342. The second asked the consent of

the people to the issue of $600,000 in bonds, payable out of the revenues of the port of San Francisco, for the construction of a new ferry building. The authority was granted by a vote of 91,296 to 90,430. The third was designed to test the popularity of an educational qualification for the suffrage. It was found that 151,320 voters favored such a qualification and 41,059 opposed it. The fourth was a proposition to refund the state debt at a lower rate of interest. As the bulk of the debt of California was held in the school fund, so that there would be no public advantage in a reduction of the interest charge, while the small amount in private hands could be easily paid off without an extension, the refunding plan was rejected by a vote of 79,900 to 85,604.

The session lasting from January 2 to March 14, 1893, was prolific in propositions for amendments, of which twenty-four were introduced in the senate and thirty-one in the assembly. Of the proposed senate amendments nine passed that body and six received the requisite majorities in both houses. Of these, one, transferring the seat of government from Sacramento to San José, was declared by the supreme court to have passed the legislature in an irregular way, and hence was not submitted to the people. The other five were voted upon as follows :

	YES.	NO.
No. 7 (providing for the election of the state board of equalization by congressional districts instead of by equalization districts, thus involving an immediate addition of three members to the board).	86,777	88,605
No. 14 (authorizing the formation of new counties by general laws).	140,713	44,824
No. 16 (exempting free public libraries and free museums from taxation).	135,741	46,338
No. 17 (abolishing the requirement that any new charter adopted for San Francisco should provide for a city council of two chambers).	106,768	62,425
No. 20 (increasing pay of members of the legislature to $1,000 per term).	45,675	146,680

At this session the constitution-menders of the assembly contributed thirty-one propositions, of which six passed the assembly and four went before the people. All of these were adopted, the vote standing thus:

	YES.	NO.
No. 8 (fixing an educational qualification for the suffrage).	170,113	32,281
No. 7 (exempting young fruit and nut-bearing trees and grape vines from taxation).	147,002	48,153
No. 12 (forbidding the acquisition of real estate by aliens).	119,309	56,805
No. 31 (adding the president and the professor of pedagogy of the University of California to the state board of education).	98,676	77,295

Of the two amendments that passed the assembly but not the senate, one abolished the railroad commission and the other authorized the exemption from taxation of property to the amount of $500 for each taxpayer.

In the next session, beginning January 7 and ending March 7, 1895, twenty-eight amendments were proposed in the senate. Six passed that body, of which three reached the people and were adopted as follows:

	YES.	NO.
No. 8 (authorizing the use of any method of voting prescribed by law, provided secrecy be preserved — the object being to permit the use of voting machines).	121,773	78,086
No. 13 (authorizing cities to provide in their charters for police courts, boards of education, police commissioners and boards of election, and permitting consolidated cities and counties to regulate their county officers).	99,088	74,906
No. 25 (exempting city charters from the control of general laws in municipal affairs).	101,587	74,353

The three senate amendments that failed to pass the assembly all related to taxation; one providing for the exemption of shipping, one for the abolition of poll taxes, and one for the exemption of household goods to the amount of $200.

The members of the assembly were more industrious on this occasion. They introduced fifty-five constitutional amendments, of which they succeeded in passing nineteen through their own house. Of these, six related to revenue and taxation, two to suffrage and elections, two to judges and juries, one to county officers, one to corporations, four to the legislature and legislation, one to the railroad commission, one to the ownership of property by aliens and one to the manner of amending the constitution. Three passed both houses, but all were defeated on the popular vote, to wit:

	YES.	NO.
No. 11 (providing for woman suffrage).	110,355	137,099
No. 19 (establishing limited liability for stockholders in corporations).	82,609	109,433
No. 33 (exempting mortgages and trust deeds from taxation).	63,620	158,093

The next and latest session of the legislature extended from January 11 to March 19, 1897. Ninety constitutional amendments were introduced, — forty-four in the senate and forty-six in the assembly, — and the general belief that thirty or forty of them would reach the people stimulated the fear that the whole system of government might be going to wreck. At least twenty would, no doubt, have been submitted, but for the fact that the legislature, in its anxiety to prevent a politically hostile governor from "pocketing" bills, adopted a rule setting apart the last twelve days of the session for the consideration of constitutional amendments. The intention was to present all bills to the governor before this period began, so that he would have none in his hands when the legislature adjourned; but in practice the rule was not observed, for the bills crowded in until the end of the session, and most of the constitutional amendments died for lack of time to consider them. Inciden-

tally, to illustrate the facility with which ingenuity sometimes overreaches itself, eighty bills perished in the governor's pocket.

Of the forty-four constitutional amendments introduced in the senate, six passed that body. Three — relating respectively to a division of the state into fish and game districts, to the judiciary and to the compensation of county and township officers — failed to pass the assembly. The other three — of which one provided for home rule throughout the state by authorizing the people of the counties to frame and adopt their own county government acts, one related to revenue and taxation, and the other created a court of claims — passed both houses and will be submitted to the people at the next general election.

The assembly adopted eight of the forty-six amendments that originated in that body. Four of these, three relating to revenue and taxation and one to special and local legislation, stopped there. The other four — relating respectively to the lieutenant-governor, the sessions of the legislature, the organization of consolidated city and county governments, and grammar schools — will be submitted to popular vote at the next election. In addition to the seven senate and assembly amendments upon which their judgment will be required, the people will also have to decide whether a convention shall be called for the construction of an entirely new constitution.

Since the present organic law of California has been in force four hundred and eighty-six constitutional amendments have been introduced in one house or the other of the legislature. Of these ninety-nine have passed the house of origin, thirty-five have been submitted to the people, seventeen have been adopted, eleven defeated and seven are pending. The table on the opposite page shows the progress of such legislation.

In some states the complaint is heard that the people do not vote on constitutional amendments with discriminating intelligence. Sometimes they accept everything that is offered to them, and at other times reject everything. Often they are said to be guided by party considerations, following blindly the lead of political conventions which endorse or condemn certain

LEGISLATIVE SESSIONS.

AMENDMENTS	23D 1880	24TH 1881	24TH Extra 1881	25TH 1883	25TH Extra 1884	26TH 1885	26TH Extra 1886	27TH 1887	28TH 1889	29TH 1891	30TH 1893	31ST 1895	32D 1897	TOTAL
Introduced . .	3	21	—	38	45	25	26	28	29	43	55	83	90	486
Passed house of origin . . .	—	—	—	4	4	4	—	10	9	14	15	25	14	99
Submitted to people . . .	—	—	—	2	1	1	—	3	1	5	9	6	7	35
Adopted . . .	—	—	—	2	1	—	—	1	1	2	7	3	—	17
Rejected . . .	—	—	—	—	—	1	—	2	—	3	2	3	—	11
Pending . . .	—	—	—	—	—	—	—	—	—	—	—	—	7	7

amendments. Nothing of this sort is known in California. There the voters consider each proposed amendment on its own merits, and as a rule their decision is wise. Of the seventeen amendments adopted it is safe to say that, according to the consensus of intelligent opinion, at least fifteen effected an improvement in previously existing conditions. The expediency of the other two — one providing for the publication of school text-books by the state and the other forbidding the acquisition of real estate by aliens — is still in dispute; but both struck at acknowledged evils and are thoroughly approved by public sentiment. The table printed above shows the manner in which the projects of innovators are sifted out until only the most desirable become embodied in law. At every session of the legislature swarms of more or less well-meaning citizens appear at Sacramento to urge the adoption of proposed alterations of the constitution. At a rough guess it may be said that at least a thousand such propositions have been advanced in the past seventeen years. Four hundred and eighty-six of these have had sufficient merit or influence—very little of either being required at this stage—to get themselves formally introduced. Ninety-nine have passed the ordeal of consideration in committee and have commended themselves to the judgment of two-thirds of the members of one house. Thirty-six have secured the votes of two-thirds of each house, and of these one has been invalidated by the courts without submission to the people. Eleven have been rejected at the

polls, seven remain to be acted upon, and only seventeen, out of the original thousand or more, have found their way into the constitution.

It is often urged against the principle of popular lawmaking that the people do not take an interest in abstract propositions, and that measures submitted to their decision are disposed of by a small fraction of the electorate. This has not been the experience of California. There it has been found that it is impossible to poll a full vote at special elections, whether for constitutional amendments, city charters, authorizations of bond issues, filling official vacancies or anything else; but when an amendment is submitted at a general election, about two-thirds, as a rule, of those who vote for the heads of the tickets, express their opinions upon it. The average vote for constitutional amendments in each year, as compared with the total vote for the heads of the national or state tickets at the same election, is shown by the following table:

	TOTAL VOTE.	AVERAGE VOTE ON AMENDMENTS.	PERCENTAGE OF AMENDMENTS TO TOTAL.
1884	196,641	155,966	79.3
1886	195,294	133,165	68.6
1890	252,386	99,617	39.4
1892	269,923	168,941	62.5
1894	284,547	183,797	64.6
1896	296,503	202,208	68.2

The highest proportionate vote ever cast for an amendment in California was in 1896, when 247,454 votes were polled on the question of woman suffrage, or 83.4 per cent of the number cast for president on the same day; the lowest was in 1890, when 99,617 citizens, or 39.4 per cent of the number voting for governor, expressed their opinions on the subject of permitting cities of over 3500 inhabitants to frame their own charters. The small vote on the latter occasion was due to the fact that the proposition was substantially unopposed. The lack of an absolutely full vote on any question is, more-

over, not a disadvantage, but the reverse. It means that only those who feel some interest in the subject, and are therefore prepared to act with a certain intelligence, take the trouble to vote, and that the members of the unintelligent residuum voluntarily disfranchise themselves.

The conservatism which is characteristic of legislation by referendum, wherever it is intelligently applied, is a marked feature of constitutional development in California. Changes are effected step by step, as the need for them becomes apparent in the light of experience. No experiments are tried from a mere light-hearted love of novelty, and yet the fact that a device is novel does not prevent its adoption if it be plainly needed. The workings of the system are well illustrated by the evolution of the rules controlling the organization of city governments. The original constitution, as framed in 1879, authorized cities of over 100,000 inhabitants to draw up and adopt their own charters, subject to the formal approval of the legislature. As it had become evident by 1887 that this privilege was in no danger of abuse, it was extended to cities of 10,000 inhabitants. The next legislature proposed an amendment, which was adopted, reducing the limit of population to 3500. Perhaps it should be explained that under the present constitution the legislature has never had the power of framing a special charter for any town, however insignificant. The smallest village has a right to incorporate itself, by its own vote, as a municipality of a certain class, under a general form of charter adapted to all places of that class; but every town of 3500 inhabitants and over can now make its own charter to suit its special needs. After several cities had attained self-government, as they thought, through charters framed by boards of freeholders, it was discovered that in some of the most important matters, such as street work, their hands were tied by previous legislation; since the constitution provided that such charters should supersede special laws inconsistent with them, but left them still subject to general laws. In 1892 this defect was corrected by the passage of a constitutional amendment striking out the word "special" and thus

making charters take precedence of all existing laws of every description. They were still liable, however, to interference from general legislation passed after their adoption; and in 1896 the people carried the principle of home rule to its logical conclusion, by making freeholders' charters supreme in municipal affairs, even as against later general laws. Meanwhile, in 1894, the same principle had been recognized by the adoption of an amendment striking out the constitutional provision requiring cities of the first class — that is to say, San Francisco — to embody the bicameral system in any future charters. Finally, in 1897, the legislature submitted a new amendment, designed to extricate San Francisco from the tangle in which it has been involved by a recent supreme court decision on the structure of consolidated city and county governments.

For many years the struggles over special legislation creating new counties was a growing scandal. A group of real-estate speculators in an ambitious town would raise a fund and take it to Sacramento to smooth the way for the passage of a law authorizing the formation of a county, with that town as its seat of government. The business men of the old county would raise another fund, and prosperity would prevail in the lobby. A single contest of this sort would sometimes last through two or three sessions, and "county-division fights" became as notorious as senatorial elections for their demoralizing effects. To cure this evil the legislature in 1893 proposed, and the people in the following year adopted, a constitutional amendment permitting the formation of new counties under general laws by the vote of the people interested. In the same line is an amendment, recently submitted, abolishing the occasion for the "county-government fights" at Sacramento by authorizing the people of the respective counties to regulate their own governments, after the manner of city charters.

Again, the plan of taxing everything, adopted in 1879, has been found to be too burdensome, and is now in course of relaxation. In 1894 amendments were adopted to exempt free public libraries, free museums, and young fruit and nut-bearing trees and grape vines; an agitation in favor of exempting ship-

ping will probably soon succeed; and an earnest effort is on foot to secure the remission of the whole subject to the counties.

The evils of an ignorant electorate are undeniable; but if correction of them had been left to the legislature, it is probable that the fear of incurring unpopularity by restricting the franchise would have prevented action. There could be no danger, however, in asking the people whether they wanted a restriction; and, accordingly, the question was put in 1892. When a majority of the voters in every county of the state, aggregating 151,320 against 41,059, announced their desire for an educational qualification, there was no hesitation in submitting a constitutional amendment restricting the suffrage to those who could read the constitution in English and write their names, and this was adopted by a vote of 170,113 to 32,281.

The suspicious vigilance of the people never tolerates anything that appears to cover a "job." Repeated efforts have been made to increase the pay and privileges of members of the legislature and other public servants, but always without success. The Southern Pacific Company, which always controls the legislature when this seems to be worth while, undertook in 1885 to secure a change in the methods of taxation, by which it would be taxed on its income instead of on its property. There was no trouble in getting a two-thirds vote of each house of the legislature in favor of the necessary amendment; but when the measure came before the people, only 9992 citizens, or just about the number of the employees of the corporation, voted in its favor, while 123,173 voted against it.

Of course this process of popular law-making under constitutional forms has carried the constitution far from the scientific ideal of such an instrument, has destroyed any symmetry and simplicity it might have had — though, as a matter of fact, this particular constitution never possessed those qualities — and has made somewhat more hazy than before the general knowledge of the actual state of the fundamental law. But nevertheless, as compared with the ordinary processes of legislation, the gain in simplicity and certainty has been enormous. The state constitution, with all its amendments, can be carried

in the pocket, while every session of the legislature turns out a thick volume of statutes, each of which in turn engenders several volumes of court reports. Although the layman cannot be absolutely safe in interpreting even the constitution for himself, the courts take far fewer liberties with its text than with the acts of the legislature, which are treated so cavalierly that they hardly carry even a presumption of expressing the law until they have been confirmed by judicial sanction. Hence there is gradually growing up in California a body of law which is "understanded of the people," which is comprised in manageable bulk and which is grounded on popular approval. It deals with the most substantial interests of the community, and through its agency the opportunities for mischief open to legislative caprice and corruption are narrowing year by year. Impatient reformers become disheartened because everything is not accomplished at once, but no general election passes without the correction of some abuse in government or the achievement of some positive advance. When the harness chafes long enough at any particular point to make the annoyance seriously felt, the people alter it until it is comfortable; and as no good piece of work of this sort is ever undone, the ultimate achievement of a perfect fit is only a question of time.

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